IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

OT.Rev.No. 6 of 2015 ()

TA(VAT) 800/2012 of KERALA VAT APPELLATE TRIBUNAL, ERNAKULAM DT.2.5.2014
....

REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA

BY SR. GOVERNMENT PLEADER SRI. LIJU V. STEPHEN

RESPONDENT/APPELLANT/ASSESSEE:

SRI. P.T.DAVIS, PROPRIETOR,
M/S.MARIA POULTRY FARM,
THAZHEKAD P.O., THRISSUR-686697.

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR ADMISSION ON 28-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OKB

C.R.

THOTTATHIL B. RADHAKRISHNAN & K.HARILAL, JJ.

O.T.Rev. (VAT) No.6 of 2015
&
C.M. Application No.26 of 2015

Dated this the 28th day of January, 2015

O R D E R

Thottathil B. Radhakrishnan, J.

We have heard the learned Senior Government Pleader quite elaborately on different aspects of this revision, which stands with an application seeking condonation of delay of 133 days.

2. The reason attributed for the delay is the time taken for processing the file, which appears to be an omnibus plea in almost all the delay petitions. We are of the view that the delay is not satisfactorily explained, disclosing sufficient cause to condone it.

3. Be that as it may, we have also taken note of the ground as to whether any substantial injury would result to the Revenue, if the revision is not entertained. The penalty order, as affirmed by the first Appellate Authority, was interfered with by the Tribunal clearly holding on fact that the statutory authorities below had failed to show that the appellant received any amount over and

above what was conceded in the invoice and what is accounted in the regular books of account of the assessee. The next finding on fact is that the vehicle intercepted was different from the one mentioned in the invoice issued by the appellant. It was also held that there was absolutely no evidence to establish that the appellant had sold goods @ Rs.62/- per Kg. The penalty order imposed on the appellant in relation to transit of poultry was thereby set aside by the Appellate Tribunal. These findings of facts did not give rise to any question of law, which the Tribunal has failed to decide. Nor was any question of law erroneously decided by the Tribunal. Under such circumstances, we do not find our way to entertain the revision, even on merits, in terms of Section 63 of the KVAT Act.

4. We should, however, also answer a particular question raised by the revision petitioner State. Sri.G.Santhosh Kumar was the departmental member of the Tribunal, which decided the appeal. According to the pleadings in the revision petition, that officer was the assessing authority in respect of the group consisting of the assessee wherein the undervaluation was allegedly involved. The plea is that in terms of sub-section (8) of Section 4, Sri.G.Santhosh Kumar was disqualified from hearing the case.

5. Sub-section (8) of Section 4 of the KVAT Act reads as follows:

> "**4. Appellate Tribunal:-**
> (8) Any member who has previously dealt with any case coming up before the Appellate Tribunal in any other capacity or is personally interested in any case coming before the Appellate Tribunal shall be disqualified to hear that case."

6. The prohibition in the aforeread provision is only as against a member of the Tribunal hearing a matter, that arises from a case, which was decided by that person in any other capacity.

7. In the case in hand, the original order is a penalty order. That penalty order was subject to an appeal by the first appellate authority. Sri.G.Santhosh Kumar was neither the Intelligence Officer, who passed the original penalty order, nor the authority which heard the First Appeal. Under such circumstances, there was no legal inhibition for Sri.G.Santhosh Kumar from being a member of the Tribunal while dealing with the case in hand. There was no embargo merely on the ground that he was the assessing authority of the group within which the assessee would fall for assessment. The argument to the contrary does not lie on the face of Section 4(8) of the KVAT Act. That plea of the State is rejected.

8. Hence, we see no merit to admit this revision.

In the result,

(1) C.M. Application is dismissed, and

(2) Revision is rejected.

Sd/-
THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-
K.HARILAL, JUDGE

okb.

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P.A. to Judge